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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/442,347	11/17/1999	HAROLD RAND THOMPSON	00216-468001	5709

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EXAMINER

KAUFMAN, JOSEPH A

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 01/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/442,347

Applicant(s)
Thompson et al.

Examiner
Joseph A. Kaufman

Art. Unit
3754



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 4, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 C.3. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-36 is/are pending in the application.
- 4a) Of the above, claim(s) 3, 4, 6-9, 18-20, 23, and 27-36 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1, 5, 10-17, and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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Claim Rejections - 35 USC § 112

1. Claims 10-17 and 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 10 and 11, lines 1 and 2, the product delivery member and the product holding structure have been previously set forth, raising issues of double inclusion.

In claims 12-16, the various structures now in claim 2 are positively recited for a second time in each of these claims, i.e. "a porous structure". This raises issues of double inclusion.

Claims 17 and 24-26 depend from non-elected claims.

Please check all claims for similar deficiencies.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to

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the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 5, 17, and 24sub1-26sub1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin in view of Frutin '054.

Baldwin shows a container 2; top 8; body portion 4; bottom 6; valve mechanism 15, 32; actuation lever/hand engaging portion 92; smooth connection 84; product delivery member 32; product holding structure as the flat rim below 8; valve actuating member 79; and the container can dispense spray of "any nature" as discussed in column 2, line 3. Baldwin lacks the axial discharge. Frutin shows the axial discharge in Figure 1. It would have been obvious to one of ordinary skill in the art to provide the axial discharge as taught by Frutin on the device of Baldwin in order to have a different direction of flow out of the device which would better apply the material in certain situations.

Allowable Subject Matter

4. Claim 2 is allowed.

5. Claims 10-16 and 24sub2-36sub2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Response to Arguments

6. Applicant's arguments filed September 21, 2001 have been fully considered but they are not persuasive.

Applicant contends that Frutin and Baldwin are not properly combinable. As both are aerosol containers that discharge liquid by using a gas propellant, they are clearly within the same field of endeavor. Further, merely changing the direction of discharge is common and Frutin was employed as an example of this concept.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph A. Kaufman whose telephone number is (703) 308-0266. On alternating Mondays and every Tuesday through Friday, Mr. Kaufman can be reached between the hours of 5:30AM and 3PM.

Papers relating to this application may be submitted to Group 3700 by facsimile transmission. Papers should be faxed to Group 3700 via the PTO Fax Center located in Crystal Plaza Building 2, Arlington, Virginia. The submission of such papers by facsimile transmission

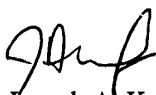
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must comply with the Notice published in the Official Gazette, **1096 OG 30** (November 15, 1989). The CP-2 Fax Center number is (703) 305-3588.

jak
January 10, 2002


Joseph A. Kaufman
Primary Examiner
Group 3700
1/10/02